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**AGENDA ITEM 4**

**TO: MEMBERS OF THE AD HOC BOARD GOVERNANCE COMMITTEE**

**I. SUBJECT:** Board and Committee Meeting Procedures /  
Code of Ethics

**II. PROGRAM:** Administration

**III. RECOMMENDATION:** Defer to the Committee

**IV. ANALYSIS:**

In June of 2001, the Board adopted a policy intended to reflect the CalPERS "rules of order" for the conduct of meetings of the Board and its Committees. The "Rules and Guidelines for the Conduct of Meetings" (Attachment A) incorporate provisions of the Bagley-Keene Open Meeting Act (the Act), the Public Employees' Retirement Law (PERL), the Board's Closed Session Policy, Roberts' Rules of Order (Roberts), and historic Board practice. It contains the following key provisions:

- Adopts Roberts as the general CalPERS standard, with exceptions as described in the draft and as required by the Act or the PERL.
- Provides a series of definitions that will guide not only in interpreting the draft, but also in applying Roberts to specific CalPERS situations.
- Describes in detail the role of the Presiding Officer.
- Provides general parameters for motions (including "friendly amendments"), and through an attachment to the draft provides detailed procedural requirements for specific types of motions.
- Specifically defines issues of reconsideration, renewal and rescission.
- Provides guidelines for the conduct of debate.

## Issues

There are several specific areas that the Committee might wish to address on this topic of governance. These are set forth in no particular order below.

### 1. Formation of Subcommittee in Absence of a Quorum

Occasionally, a Board Committee will not have a sufficient number of members to conduct business. In this instance, a sub-committee may be formed to conduct the business of the Committee and present recommendations for action to the full Board.<sup>1</sup> Under the Statement of Governance Principles, the Board President has authority to appoint subcommittees.<sup>2</sup> If the President and the Vice-President are unavailable, however, there is no other delegated authority for the appointment of a sub-committee. This can present problems when there are not enough Committee members present to form a quorum because of the timing involved. The Sub-committee may wish to consider adding a provision allowing a Committee chair to appoint a sub-committee in these limited circumstances.

### 2. Reconsideration Motion

The Board's Rules and Guidelines for the Conduct of Meetings allows a Committee or the Board to "reconsider" a previous motion only in limited circumstances. The policy provides as follows:

**230.2. Reconsideration** enables the majority of a body, within a limited time, to bring back for further consideration a motion that has already been voted on. The purpose of reconsidering a vote is to permit correction of hasty, ill-

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<sup>1</sup> Government Code section 20099 provides that the Board may delegate its authority to a committee, provided that committee decisions are ratified or reversed by the full Board unless the Board has delegated final decision-making authority to the committee. Robert's Rules also provides that in the absence of a quorum, the members of a body may act but their actions are not effective unless ratified by a later meeting of the body. (Robert's Rules, § 39, at p. 342.)

The Board President has delegated authority as follows:

- c. In consultation with affected Committee Chairs, appoint subcommittee membership, giving consideration to the expressed desires of individual Board members and the value of providing direct exposure to differing Board responsibilities.

(Statement of Governance Principles, at p. 9.)

advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote.

**230.2.1.** See section 230.1.2 (above) for a discussion as to whether a subsequent motion is actually a new motion, rather than a motion to reconsider a previous motion.

**230.2.2.** A motion to reconsider may only be made by a member who voted with the prevailing side. This requirement does not apply to one who seconds such a motion. When making such a motion, the mover should state for the record the s/he previously voted on the prevailing side.

**230.2.3.** A motion to reconsider must be made no later than the regularly-scheduled meeting of the body that immediately succeeds the meeting at which the underlying decision was made, [provided this subsequent meeting takes place on a date in which a public notice may be made consistent with law.](#) The member seeking reconsideration must timely request that the matter be noticed for the subsequent meeting. This request may be directed to either the body's presiding officer, or to CalPERS Chief Executive Officer. Neither the presiding officer nor CEO, however, may decline such a request unless it is determined that the request is untimely or that the action authorized by the motion that is sought to be reconsidered has already been completed in such a way that it cannot be undone.

**230.2.4.** The making of a motion to reconsider suspends action on all other pending matters.

**230.2.5.** [Unless the Board has delegated final decision-making authority over an issue to a committee,](#) the committee may not reconsider its decision to make a specific recommendation to the Board. Such reconsideration may only occur at the Board level. However, if a committee has acted to decline to make a recommendation to the Board, this decision-not-to-act may be reconsidered by the committee subject to the limits described above.

Thus, the Board may reconsider previous action only at the following regularly-scheduled meeting, only upon motion of a member who voted in

favor of the original action, and *only at the Board level*. A committee without final decision-making authority may not reconsider its original recommendation to the full Board. The Committee may wish to simplify these rules.

3. Collegiality Between Board and Staff

The Statement of Governance Principles describes the Board's governance style.

The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee level and as between the Board and management. The Board strives to achieve a governing style that emphasizes:

...

- e. Encouragement of *collegiality*, including the creation of an environment which supports CalPERS' Core Values
- f. *Civility and courtesy*, to both those with whom the Board interacts and between Board members
- g. Respect for ~~*diversity in viewpoints*~~, recognizing value in all input
- h. Governance by *consensus*
- i. A partnership with CalPERS management

....<sup>3</sup>

The Governance Principles further provide:

Each Board member should commit to conduct him/herself at all times with civility and courtesy .... Individual Board members should also endeavor to correct fellow Board members, should any of their conduct fall below this standard.<sup>4</sup>

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<sup>3</sup> Governance Principles, at p. 4 (italics in original; strikethrough text indicates pending revision).

<sup>4</sup> *Id.* at p. 6.

Finally, each Committee chair is responsible for conducting the Committee meeting, “enforcing standards of civility as appropriate.”<sup>5</sup>

This Committee may wish to discuss these provisions of Board governance.

4. Closed Session Policy

Effective January 1, 2006, the Legislature amended the Open Meeting Act to allow the Board to hold a closed session to consider the “development of rates and competitive strategy” for the Long Term Care program.<sup>6</sup> The Board’s Closed Session Policy should be amended to include these types of closed sessions.

5. Limitations on Speaking Time

On occasion, public speakers at Board or Committee meetings will take more time than is reasonably necessary to present their views to the body. This can delay the conduct of the body’s business.

The Meeting Policy provides that, in general, time limitations are not imposed on public speakers (or Board members). On an “ad hoc” basis, the chair (or the Committee) may impose limitations through direction (or a motion) to limit debate under Robert’s Rules.

The Open Meeting Act provides that “the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item ....”<sup>7</sup> At the same time, the body may “adopt reasonable regulations [regarding public comment], including ... regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.”<sup>8</sup>

This Committee may wish to consider a proposed regulation limiting individual speakers to a specific amount of time.

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<sup>5</sup> *Id.* at p. 11.

<sup>6</sup> Assembly Bill 277, amending Gov. Code, § 11126.

<sup>7</sup> Gov. Code, § 11125.7, subd. (a).

<sup>8</sup> *Id.*, §11125.7, subd. (b).

6. Code of Ethics

Attachment B is a copy of the Board's "Code of Ethics." This was adopted in conjunction with the Board's Governance Principles. In summary, the policy provides that Board members:

- Shall maintain high ethical conduct;
- Shall exercise care, prudence, and diligence in handling confidential information;
- Shall follow the state ethics laws;
- Shall take positive steps to prohibit a breach of duty and unauthorized communications;
- Shall never act when they have a conflict of interest or the appearance of a conflict of interest; and
- Shall act in accordance with the "prudent expert rule."

This Committee may wish to re-visit the Code of Ethics.

**V. STRATEGIC PLAN:**

This project supports Goal II of the 2005 Strategic Plan Goals which calls for CalPERS, as an organization, to "foster an environment that values quality, respect, diversity, integrity, openness, communication and accountability."

**VI. RESULTS/COSTS:**

Memorializing the Board's standards for meeting conduct will improve the efficiency of Board operations.

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PETER H. MIXON  
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MEMBERS OF THE (type board/committee name here-ALL CAPS)  
(type report date here)